



STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 206574

Pursuant to petition filed October 17, 2022, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, a telephonic hearing was held on Wednesday, January 11, 2023, originating from Milwaukee, Wisconsin. A previously scheduled hearing was rescheduled at the respondent's request. The respondent did not appear for the January 11, 2023 hearing.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

PARTIES IN INTEREST:

Petitioner:

Megan Ryan
Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Respondent:

██████████
████████████████████
██████████
████████████████████

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FS benefits in Milwaukee County from at least March 4, 2022 through August 31, 2022.
2. The respondent completed an online ACCESS application for FS on March 3, 2022. At that time, she reported that no member of her household was receiving FS from another state. Exhibit 1.
3. The respondent received SNAP from the State of Michigan from 2021 through August 31, 2022; duplicate FS benefits were received from Wisconsin and Michigan between March of 2022 and August of 2022. Exhibit 6.
4. The respondent accessed her Michigan FS benefits twice on the date that she applied for Wisconsin FS benefits. Exhibit 7.
5. The respondent used or attempted to use both cards to complete purchases on May 19, 2022, June 18, 2022, July 4, 2022 and July 10, 2022. See, Exhibit 5 and Exhibit 7.
6. On December 1, 2022, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent provided false information at application regarding receipt of FS from another state.
7. The respondent failed to appear for the scheduled January 11, 2023, Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

DISCUSSION

An intentional program violation (IPV) of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

FoodShare Wisconsin Handbook, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An individual who commits an IPV can be disqualified from participation in the FS program. The length of the disqualification period depends, in part, on the nature of the IPV. See 7 C.F.R. § 273.16(b). Generally, an individual will be disqualified for twelve months after committing her or his first IPV. See 7 C.F.R. § 273.16(b)(1)(i). The agency can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Although other family members cannot be disqualified, their monthly allotments will be reduced in cases of overpayments, unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

An IPV can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1.

When an administrative disqualification hearing is scheduled and the respondent does not appear, 7 C.F.R. §273.16(e)(4) provides that the hearing shall nevertheless proceed if the respondent cannot be located or fails to appear without good cause. Here, the agency demonstrated that it sent a hearing notice to Respondent prior to the hearing which included an instruction to contact the undersigned administrative law judge (ALJ) with a telephone number at which respondent would be available at the date and the time of the hearing. The respondent did not do so and the ALJ was unable to reach her at the time of the hearing. Because Respondent did not appear or claim a good cause reason for not attending the hearing, the Division of Hearings and Appeals must determine whether the respondent committed an IPV based solely on the evidence that the agency presented at hearing.

To establish, at hearing, that a FS recipient has committed an IPV, the petitioner must prove the following two separate elements through the presentation of clear and convincing evidence: (1) the recipient committed a program violation; and (2) the recipient intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

Kuehn, 11 Wis.2d at 26.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. *See, John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

The agency contended that respondent intentionally misled the agency when she failed to accurately report that she was receiving FS benefits from another state. The agency presented FS issuances for respondent's Wisconsin and Michigan FS benefits cases, noting that the respondent used her Michigan FS benefits twice on the date that she applied for Wisconsin FS benefits and reported not receiving FS benefits from another state. Between March and August of 2022, the respondent received FS benefits from both Wisconsin and Michigan.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

CONCLUSIONS OF LAW

- The respondent intentionally misrepresented, concealed or withheld facts by denying receipt of FS benefits from another state when applying for Wisconsin FS benefits; this action constituted an intentional program violation under 7 C.F.R. § 273.16(c)1.
- The violation specified above is the first such violation committed by Respondent.

NOW, THEREFORE, it is ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

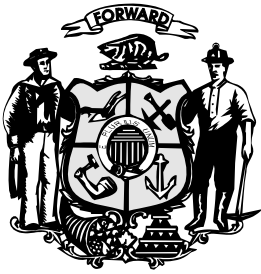
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 20th day of January, 2023



\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals

- c: Office of the Inspector General - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- Megan Ryan - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 20, 2023.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]